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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JOHNNY JAMES STRONG,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
Commissioner of Social Security

10 Defendants.

Case No. 2:16-cv-01693-TLF

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

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12 Plaintiff Johnny James Strong has brought this matter for judicial review of the
13 Commissioner's denial of his applications for disability insurance and supplemental security
14 income (SSI) benefits. The parties have consented to have this matter heard by the undersigned
15 Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13.
16 Because the ALJ erred in determining that Mr. Strong could perform his past relevant work, the
17 Court finds that the Commissioner's decision to deny benefits should be reversed, and that this
18 matter should be remanded for further administrative proceedings.

19 FACTUAL AND PROCEDURAL HISTORY

20 On January 30, 2012, Mr. Strong filed an application for disability insurance benefits and
21 another one for SSI benefits, alleging in both applications that he became disabled beginning
22 September 30, 2011. Dkt. 9, Administrative Record (AR) 153. His applications were denied on
23 initial administrative review and on reconsideration. *Id.* A hearing was held on June 24, 2013,
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1 before an administrative law judge (ALJ), at which Mr. Strong appeared and testified as did a
2 vocational expert. AR 52-79.

3 In a decision dated July 22, 2013, the ALJ found that Mr. Strong could perform his past
4 relevant work and therefore that he was not disabled. AR 153-61. On February 6, 2015, the
5 Appeals Council granted Mr. Strong's request for review, vacated the ALJ's decision, and
6 remanded the matter for further administrative proceedings. AR 168-70.

7 On remand, a second hearing was held before the same ALJ, at which Mr. Strong
8 appeared and testified, as did a different vocational expert. AR 80-113. In a decision dated June
9 29, 2015, the ALJ again found Mr. Strong could perform his past relevant work, and therefore
10 that he was not disabled. AR 18-29. Mr. Strong's request for review was denied by the Appeals
11 Council on September 9, 2016, making the ALJ's decision the Commissioner's final decision.
12 The plaintiff then appealed in a complaint filed with this Court on November 2, 2016. AR 1; Dkt.
13 3; 20 C.F.R. § 404.981, § 416.1481.

14 Mr. Strong seeks reversal of the ALJ's decision and remand for further administrative
15 proceedings, arguing the ALJ erred: (1) in discounting Mr. Strong's credibility concerning his
16 symptoms and limitations; and (2) in finding Mr. Strong could perform his past relevant work.
17 For the reasons set forth below, the Court agrees the ALJ erred in finding Mr. Strong could
18 perform his past relevant work, and therefore finds this matter should be remanded for further
19 administrative proceedings on that basis.

20 DISCUSSION

21 The Commissioner's determination that a claimant is not disabled must be upheld if the
22 "proper legal standards" have been applied, and the "substantial evidence in the record as a
23 whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);
24 *see also Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v.*

1 *Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). “A decision supported by substantial
2 evidence nevertheless will be set aside if the proper legal standards were not applied in weighing
3 the evidence and making the decision.” *Carr*, 772 F.Supp. at 525 (citing *Browner v. Sec’y of*
4 *Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is “such
5 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
6 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at
7 1193.

8 The Commissioner’s findings will be upheld “if supported by inferences reasonably
9 drawn from the record.” *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to
10 determine whether the Commissioner’s determination is “supported by more than a scintilla of
11 evidence, although less than a preponderance of the evidence is required.” *Sorenson v.*
12 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one
13 rational interpretation,” that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th
14 Cir. 1984). That is, “[w]here there is conflicting evidence sufficient to support either outcome,”
15 the Court “must affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*
16 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

17 The Commissioner employs a five-step “sequential evaluation process” to determine
18 whether a claimant is disabled. 20 C.F.R. § 404.1520, § 416.920. If the claimant is found
19 disabled or not disabled at any particular step thereof, the disability determination is made at that
20 step, and the sequential evaluation process ends. *See id.* At step four of that process, the ALJ
21 found Mr. Strong could perform his past relevant work as a house officer and an airline security
22 representative, both as Mr. Strong actually performed them and as they are generally performed.
23 AR 28. Mr. Strong argues the ALJ erred in doing so. The Court agrees.

1 Although Mr. Strong worked as a cruise ship screener, the vocational expert classified
2 that past job as airline security representative. AR 106, 324. Airline security representative is
3 described by the Dictionary of Occupational Titles (DOT) as light work, which involves lifting
4 no more than 20 pounds occasionally, and 10 pounds frequently. DOT 372.667-010, 1991 WL
5 673094; 20 C.F.R. § 404.1567(b); 20 C.F.R. § 416.967(b). The ALJ also limited Mr. Strong to
6 light work. AR 23.

7 Mr. Strong reported that as a cruise ship screener that he “would have to pick up luggage
8 at hotels and carry” it, and that the heaviest weight he lifted was 50 pounds. AR 322, 324. Mr.
9 Strong further reported that he had to place and carry baggage for passengers, and place and lift
10 it on and off of x-ray devices. AR 322. In addition, Mr. Strong reported he spent a total of three
11 to four hours per day handling, grabbing, or grasping large objects. AR 322, 324. Thus, it is not
12 at all clear that lifting more than 20 pounds “was not a regular customary part of his job” as the
13 ALJ found. AR 28.

14 The Commissioner argues the ALJ may have erred in finding Mr. Strong performed the
15 job of cruise ship screener as it was actually performed, but Mr. Strong could still perform that
16 job as it is generally performed. As Mr. Strong points out, though, the vocational expert testified
17 that although he had not seen the lifting of luggage typically being done in performing the airline
18 security representative, he had been on a cruise and had seen screeners lifting luggage. AR 109.
19 Thus, from the vocational expert’s personal experience, he had seen that cruise screener job done
20 differently. *Id.*

21 Accordingly, the vocational expert appears to have at least acknowledged the possibility
22 that the job of cruise ship screener may typically involve the lifting of luggage, which certainly
23 can weigh far more than 20 pounds as Mr. Strong reported. *Id.* While this is far from conclusive
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1 testimony, at the very least there appears to be a conflict between the DOT and the vocational
2 expert's testimony. The ALJ has the affirmative responsibility to ask the vocational expert about
3 possible conflicts between his or her testimony and information in the DOT. *Haddock v. Apfel*,
4 196 F.3d 1084, 1091 (10th Cir. 1999); SSR 00-4p, 2000 WL 1898704, at *1. The ALJ also must
5 explain how the discrepancy or conflict was resolved. SSR 00-4p, 2000 WL 189704, at *4. The
6 ALJ did not do so here, and that was error.

7 Mr. Strong also reported working in a hotel security position, which required him to pick
8 up luggage at hotels. AR 321. He reported that the heaviest weight he lifted was 50 pounds, and
9 that he handled, grabbed, or grasped big objects up to four hours each day. *Id.* Mr. Strong further
10 testified that he was lifting luggage in this position, and that he was making beds at night and
11 assisting with hotel guests. AR 103. The vocational expert at the second hearing testified that this
12 job was a house officer job, which the DOT classifies as light work. AR 106; DOT 376.367-018,
13 1991 WL 673173.

14 Here too, having to lift luggage that weigh up to 50 pounds is odds with what light work
15 entails. Further, even if it is unclear as to exactly how much of the time Mr. Strong was required
16 to lift that amount, again at the very least there is an apparent conflict between the record and the
17 vocational expert's testimony, not to mention the DOT. The ALJ's failure to address and resolve
18 that conflict was error as well.

19 The vocational expert also testified that making beds and carrying luggage are not duties
20 of the house officer position, and thus would constitute a separate job. AR 109. As the Ninth
21 Circuit has pointed out, "[i]t is error for the ALJ to classify an occupation 'according to the least
22 demanding function.'" *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1166 (9th Cir.
23 2008) (quoting *Valencia v. Heckler*, 751 F.2d 1082, 1086 (9th Cir. 1995)). Again, it is unclear
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1 how much time Mr. Strong spent on these tasks, although as just noted he reported spending up
2 to half the day handling, grabbing, or grasping big objects. If it is the case that Mr. Strong spent
3 at least that much time carrying luggage or performing other tasks beyond that required by the
4 house officer position, it is likely that the ALJ erred in finding he could perform this past work as
5 well. *Stacy v. Colvin*, 825 F.3d 563, 570 (9th Cir. 2016) (pointing out that in past cases where the
6 least demanding aspect of a claimant's past job is something that is performed less than half the
7 time, it has found the ALJ erred in equating it with a full time job).

8 The Court may remand "either for additional evidence and findings or to award benefits."
9 *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court reverses an
10 ALJ's decision, "the proper course, except in rare circumstances, is to remand to the agency for
11 additional investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004)
12 (citations omitted). Thus, it is "the unusual case in which it is clear from the record that the
13 claimant is unable to perform gainful employment in the national economy," that "remand for an
14 immediate award of benefits is appropriate." *Id.*

15 Benefits may be awarded where "the record has been fully developed" and "further
16 administrative proceedings would serve no useful purpose." *Smolen*, 80 F.3d at 1292; *Holohan v.*
17 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

18 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
19 claimant's] evidence, (2) there are no outstanding issues that must be resolved
20 before a determination of disability can be made, and (3) it is clear from the
record that the ALJ would be required to find the claimant disabled were such
evidence credited.

21 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

22 Because issues still remain in regard to Mr. Strong's ability to perform his past relevant work,
23 remand for further consideration of that issue is warranted.

1 CONCLUSION

2 Based on the foregoing discussion, the Court finds the ALJ improperly determined Mr.
3 Strong to be not disabled. Accordingly, the Commissioner's decision to deny benefits hereby is
4 REVERSED and this matter is REMANDED for further administrative proceedings.

5 Dated this 22nd day of June, 2017.

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Theresa L. Fricke
10 United States Magistrate Judge
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